

2. On October 16, 2020, Defendant Twin City was served with the Complaint, which sets forth the claim for relief upon which the action was based.

3. A copy of the Complaint is attached hereto as **Exhibit “A”**, as required by 28 U.S.C. § 1446(a). No other documents have been served on Defendant.

4. Plaintiff alleges that it has an insurance policy with Defendants that provides coverage for certain losses. Compl. ¶ 10. Plaintiff alleges that he suffered “losses, damages, and expenses related to the COVID-19 pandemic and the governmental shutdown orders”. Compl. ¶ 4.

5. Plaintiff seeks a declaratory judgment that Plaintiff’s losses are covered under the policy of insurance issued by Defendants and that Defendants are obligated to pay the full amount of such losses. Compl. ¶¶ 39-40.

BASIS OF REMOVAL

6. This case is properly removable to federal court because it involves a controversy among citizens of different states and an amount in controversy that exceeds \$75,000, exclusive of interest and costs. *See* U.S.C. §§ 1332, 1441, and 1446.

A. Citizenship

7. Twin City Fire Insurance Company is incorporated in Indiana, and has its principal place of business in Connecticut. As such, Twin City is a citizen of Indiana and Connecticut, but not Pennsylvania, for diversity purposes. *See* 28 U.S.C. § 1332(c).

8. Plaintiff names “Hartford Insurance Company” as a defendant, but “Hartford Insurance Company” does not exist as a legal entity and therefore has no citizenship. *See Brooks v. Purcell*, 57 F. App’x 47, 50 (3d Cir. 2002) (28 U.S.C. § 1441(a) provides that for purposes of removal “the citizenship of defendants sued under fictitious names shall be disregarded.”). In any

event, Plaintiff alleges that the purported citizenship of the non-existent entity is Indiana. *See* Compl. ¶ 2. Indiana is not Pennsylvania, so non-existent entity “Hartford Insurance Company” does not present a problem for the diversity jurisdiction of this Court. *See* 28 U.S.C. § 1332(c).

9. Plaintiff, Mark Marion, is an individual. Plaintiff owns residential real property located at 150 Latonka Dr Mercer, PA 16137-9360² and is licensed as dentist in the Commonwealth of Pennsylvania.³ Plaintiff is a citizen of Pennsylvania.

10. Therefore, the parties are citizens of different states.

B. Amount in Controversy

11. Plaintiff does not specify the exact amount of damages it is seeking, however the Complaint does not seek to limit its damages below the jurisdictional threshold of this Court.

12. Plaintiff alleges that as a result of the COVID-19 pandemic and governmental orders, “the Plaintiff, Marion, was forced to close his business thereby incurring losses, damages and expenses.” Compl. ¶ 32. Plaintiff seeks recovery of the losses, damages, and expenses he incurred as a result of the COVID-19 pandemic and governmental orders. *See* Compl. ¶ 44.

13. Plaintiff seeks coverage under the “business income, extra expense, and other coverages” under its insurance policy with Twin City. Compl. ¶ 39.

14. When state practice does not permit demand for a specific sum—which is true here—the notice of removal may assert an amount in controversy. *See* 28 U.S. Code § 1446(c)(2); *see also* Pa. R. Civ. P. 1021(b). Though the Complaint is silent as to an exact figure in controversy, Plaintiff’s business, Marion Smile Center, is an established dental practice that has been in

² *See* <https://www.mcc.co.mercer.pa.us/GIS/TaxparcelViewer.htm>, find: “Marion, Mark”, (last visited November 3, 2020).

³ *See Mark Alan Marion, License Information*, Bureau of Professional and Occupational Affairs, attached hereto as **Exhibit “C”**.

operation since 1986⁴ and has at least 14 employees.⁵ Plaintiff's annual sales volume is estimated at \$589,000.⁶ Plaintiff alleges that "[d]uring the period of time from March 19, 2020 up through June 3, 2020, the Plaintiff's ability to perform dental services was severely curtailed." Compl. ¶ 31.

15. Plaintiff's allegations indicate lost business income for 77 days or roughly 21% of the year. Based on a revenue estimate of \$589,000, the estimated losses from March 19, 2020 to June 3, 2020 (both days inclusive) is approximately \$123,690 for Plaintiff. In addition, Plaintiff's complaint seeks coverage for extra expenses incurred. *See* Compl. ¶ 44.

16. Plaintiff's claim for monetary losses and expenses from closing its business is in excess of \$75,000. Therefore, the amount in controversy is greater than \$75,000.

C. Miscellaneous

17. Under 28 U.S.C. § 1441(a), venue of the removed action is proper in this Court as a district or division embracing the place where the state action is pending. The time within which Defendants are required to file this Notice of Removal in order to remove this cause to the Court has not yet expired.

18. Defendants will promptly file a copy of this Notice of Removal with the Prothonotary of the Court of Common Pleas of Butler County, where the action is currently pending pursuant to 28 U.S.C. § 1446(d).⁷

⁴ *See* <https://www.mmsmilecenter.com/> (last visited November 3, 2020).

⁵ *See* <https://www.mmsmilecenter.com/MeettheTeam> (last visited November 3, 2020).

⁶ *Mark Marion DMD*, Dun & Bradstreet Hoovers (October 2020), attached hereto as **Exhibit "D"**.

⁷ Attached as **Exhibit "B"** is a copy of the Certification of Notice of Removal, which will be filed by Defendant in the pending State Action.

CONCLUSION

Pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, Defendants remove the case captioned Mark Marion v. Twin City Fire Insurance Company and Hartford Insurance Company, Civil Action Number 20-10564, Pennsylvania Court of Common Pleas, Butler County, to the United States District Court for the Western District of Pennsylvania, on this 5th day of November, 2020.

Respectfully submitted,

By: /s/ Richard D. Gable, Jr.

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Pro Hac Vice Applications Forthcoming

*Counsel for Twin City Fire Insurance Company
and Hartford Insurance Company*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Notice of Removal will be served upon counsel via the Court's Electronic Filing System to:

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Dated: November 5, 2020

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